

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JEANNIE M. BURR,

Plaintiff,

v.

Case No. 10-CV-547

MICHAEL J. ASTRUE
Commissioner of the
Social Security Administration,

Defendant.

**ORDER RE: PLAINTIFF'S PETITION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS**

The plaintiff, Jeannie M. Burr, seeks judicial review, pursuant to 42 U.S.C. § 405(g) and 42 U.S.C. § 1383(c)(3), of the Commissioner of the Social Security Administration's (Commissioner) decision denying her application for social security disability and supplemental security income benefits. The plaintiff has filed a petition for leave to proceed in forma pauperis. (Docket #2). This petition will be addressed herein.

In order to authorize a litigant to proceed in forma pauperis, the court must make two determinations: 1) whether the litigant is unable to pay the costs of commencing the action; and 2) whether the action is frivolous or malicious. 28 U.S.C. § 1915(a) & (e)(2).

The plaintiff's affidavit of indigence indicates that she is not employed and her only source of support is medical assistance which she receives through the State of Wisconsin. Further, the plaintiff "is without savings of any kind" and she does "not own an automobile or any real estate, stocks, bonds, notes, or other valuable property" apart from her clothing and

“ordinary household furnishings.” (Plaintiff’s Application and Affidavit For Leave to Proceed In Forma Pauperis at ¶ 4). The plaintiff is represented by counsel and has filed an affidavit assigning to her attorney any fees she may be entitled to under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d). Accordingly, the court concludes that the plaintiff has satisfied the requirements of Section 1915(a) and is unable to pay the costs of commencing this action.

The plaintiff also must demonstrate that her action for judicial review has merit as required by 28 U.S.C. § 1915(e)(2). Her complaint alleges that the Commissioner’s decision denying her application for social security disability and supplemental security income benefits is not supported by substantial evidence and is contrary to law and regulation. Upon review, her complaint sets forth an arguable basis for relief in both law or fact and, therefore, is not frivolous for the purposes of Section 1915(e)(2). See Neitzke v. Williams, 490 U.S. 319, 325 (1989); Denton v. Hernandez, 504 U.S. 25, 31 (1992). Accordingly, the plaintiff’s request to proceed in forma pauperis will be granted.

ORDER

NOW, THEREFORE, IT IS ORDERED that, pursuant to 28 U.S.C. § 1915(a), the plaintiff’s petition for leave to proceed in forma pauperis be and hereby is **granted**. (Docket #2).

IT IS FURTHER ORDERED that the Clerk of Court shall serve a copy of the complaint, summons and this order upon the defendant pursuant to Fed. R. Civ. P. 4.

Dated at Milwaukee, Wisconsin this 12th day of July, 2010.

BY THE COURT:

s/ Patricia J. Gorence
PATRICIA J. GORENCE
United States Magistrate Judge